IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1164 OF 1998

Mr.Pravin Shah, Proprietor
Automotive Distributors. .. .. Petitioner
v/s.
Union of India & ors. .. .. Respondents

Mr.S.C.Naidu i/by M/s.C.R.Naidu & Co. for petitioner.

Mr.Y.R.Mishra for respondents.

CORAM : H.L. GOKHALE &
ABHAY S. OKA, JJ.

DATED : 10th February 2006

ORAL ORDER : (Per H.L.Gokhale, J.)

1. Heard Mr.Naidu in support of this Petition. Mr.Mishra appears for the respondents.

2. This Petition has been admitted way back on 8th July 1998. Neither the Central Government nor the State Government nor the Police officers have chosen to file a reply.

3. The grievance of the petitioner is that he is not being treated similarly to others who are situated identical to him and is being discriminated. The petitioner is a distributor in India of a non-lethal spray. He wanted to import and distribute that spray but his application to distribute that spray was rejected by the Minister

of Home Affairs by its order dated 19th March 1997. The petitioner came to know that another party who is similarly situated i.e. Weston Electroniks Ltd. was however permitted to import and distribute that spray and that order was passed in fact earlier i.e. on 26th April 1994. This Petition was, therefore, filed pointing out this discrimination and seeking a treatment similar to this Weston Electroniks Ltd. under the order passed in its favour on 26th April 1994. That is the prayer clause (a) of the Petition.

4. As stated above, the Petition has been admitted but no reply has been filed either by the Central Government or the State Government or its officers. Now, the Motion has been taken out in this Petition pointing out that two other parties have been permitted to distribute a similar type of spray. They are one Midas Care Pharma (P) Ltd, which has been permitted to distribute "BODY GARD and PEPPER SPRAY" and another party by name Viage Marketing Pvt. Ltd. has been permitted to distribute "HAWK" Pepper spray. The petitioner had applied for a review in the meanwhile of the earlier decision. That was by application dated 16th January 1998 and that application was also turned down by the Central Government by its

decision dated 15th June 1998. In the circumstances, Mr.Naidu appearing for the petitioner submits that in fact a writ of mandamus is necessary. However, he states that the petitioner would be satisfied if a direction is given to the respondents to decide the representation dated 16th January 1998 once again in the light of this information which is now being made available. Mr.Mishra appearing for the respondents has no instructions. This is in spite of the fact that this Petition and Motion have been on Board on last three occasions and have been adjourned from time to time on the request made by the Counsel for the Central Government to take instructions.

5. In the circumstances, having seen the similarity between the claim of the petitioner and the orders which are passed in favour of the other parties, in our view, the request made by Mr.Naidu is quite legitimate.

6. In the circumstances, we set aside the order passed by the Central Government earlier on 19th March 1997 and also the one which was passed on the Review Application i.e. dated 15th June 1998. We restore the application made by the

petitioner to the file of the Secretary to the Government of India, Home Affairs. This application dated 16th January 1998 will be restored to the file as stated above. The petitioner may file additional documents in support of his plea for non-discrimination. Considering the totality of the facts, in our view, the Central Government must consider the representation when made appropriately and on its merits.

7. Mr.Naidu states that the additional documents will be filed before the appropriate authority within four weeks. The authorities of the 1st respondent will decide the representation within four weeks thereafter.

8. Rule made absolute as above.

9. In view of this order on the main Petition, no separate order is required on Notice of Motion No.10 of 2005. The same stands disposed of.

(H.L. GOKHALE, J.)

(ABHAY S. OKA, J.)